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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,478	06/20/2001	Peter T. Bianco	731260-12	9571

71998 7590 09/25/2008

Medtronic Spinal and Biologics  
Attn: Noreen Johnson - IP Legal Department  
2600 Sofamor Danek Drive  
Memphis, TN 38132

EXAMINER
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MORGAN, ROBERT W

ART UNIT	PAPER NUMBER
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3626

MAIL DATE	DELIVERY MODE
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09/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/884,478	<b>Applicant(s)</b> BIANCO ET AL.	
	<b>Examiner</b> ROBERT W. MORGAN	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/15/08 has been entered.

### ***Notice to Applicant***

2. This communication is in response to the amendment filed 8/15/08, the following has occurred: claims 1-48 have been amended. Claims 1-48 are presented for examination.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13, 15-19, 25-39, and 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joao, (U.S. Pub. 2001/0032099) in view of Soll et al., (U.S. Pub. 2003/0055679).

As per claims 1 and 13, the collective system of Joao and Soll disclose a system for guiding a patient along a treatment pathway, beginning after a diagnosis of a medical condition requiring a medical event, wherein the treatment pathway is related to educate and prepare the patient for the medical event and post-medical event recovery, (Soll, Abstract, ¶¶ 64, 65, 97, 174-

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183, in particular Soll teaches after the physician makes a diagnosis and writes a prescription for the patient, the patient is given personalized instructions and education material about that prescription see Soll ¶ 168-174), comprising the steps of:

(a) generating, based on the medical event of the patient, at least one pre-medical event set of electronically displayable files containing health information, and at least one post-medical event set of electronically displayable files containing health information, (Joao, Abstract, ¶ 135, 152) (see also Soll, 62, 64, 174);

(b) displaying a single electronically displayable file including a treatment pathway timeline display comprising a plurality of time-sequenced phase images corresponding to time-sequenced phases of health information to illustrate the treatment pathway, each of said time-sequenced phase images providing access to at least one of a pre-medical event set of electronically displayable files containing health information for preparing and educating the patient for the medical event and a post-medical event set of electronically displayable files containing health information for preparing and educating the patient for post-event recovery so as to guide the patient along the treatment pathway, (Soll, Abstract, Fig. 2 ¶ 64, 65, 80, 97, 157, 159, 174-183) (displaying information to be accessed under each heading by date is considered to be analogous to including a treatment pathway timeline display comprising a plurality of time-sequenced phase images corresponding to time-sequenced phases of health information) (see also Joao, Fig. 3 regarding the display step); and

(c) permitting the patient to view the treatment pathway timeline display and access the health information of a particular time-sequenced phase by interacting with the corresponding time-sequenced phase image, (Soll, Abstract, ¶ 157, 159, 181, 184- 190) (accessing information

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under each heading by date is considered to be analogous to accessing the health information of a particular time-sequenced phase by interacting with the corresponding time-sequenced phase image)(see also Joao, ¶ 19, 24 regarding patient access); and, both (1) the at least one pre-medical event set of electronically displayable files containing health information for preparing and educating the patient for the medical event and (2) the at least one post-medical event set of electronically displayable files are pre-determined such that the files are stored in the healthcare information provider system, (Joao, ¶ 23, 66, 69, 120, 123, 150), in anticipation of the medical event and prior to the medical event, and such that the files are related so as to provide a treatment pathway, (Soll, ¶ 64, 65) (disclosing pre-medical event files for priming a patient, and post-event files for exit interviews, both of which are related so as to provide a treatment pathway);

--the claimed wherein the pre-medical event set of electronically displayable files are to be displayed to the patient before the medical event occurs and wherein the post-medical event set of electronically displayable files are to be displayed to the patient after the medical event occurs is met after the physician makes a diagnosis and writes a drug prescription (medical event) for the patient, the patient is given personalized instructions and education material about that drug prescription see Soll ¶ 168-174). In addition, Soll teaches that a revisit strategy where a patient, who has previously interacted with the system, is asked questions about compliance with prescribed treatment and medications (see: Soll: 184-188);

Joao discloses a system that can be utilized by any patient or provider in the same manner. As referenced above, Joao discloses an electronic patient healthcare system comprising a storage device and a patient terminal device, with input and display capabilities, for storing and

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processing patient and doctor information. Joao fails to disclose a system for guiding a patient along a treatment pathway, related to a medical event, by educating and preparing the patient for the medical event and post- event recovery. However, such a system is well known in the art as shown above by reference to Soll.

It would be obvious to one of ordinary skill in the art to combine Joao and Soll. The motivation would be to improve health care delivery to patients and better manage the process of providing health care, such system also providing high-quality health care at lower costs, (Soll, Abstract).

4. As per claim 15, the collective system of Joao and Soll disclose the method of claim 13. Soll further discloses a method wherein at least one of the pre-medical event and post-medical event sets of files includes a task file that instructs the patient to perform a predetermined task, (Soll, ¶ 174-183) (predetermined tasks include evaluating the medical practitioner and to scheduling an appointment).

The obviousness and motivation to combine Joao and Soll are as provided in claim 1 above and incorporated herein by reference.

5. As per claim 16, the collective system of Joao and Soll disclose the method of claim 15. Soll further discloses a post-diagnosis method wherein the predetermined task includes at least three of reading a medical information file, taking medication, scheduling an appointment with a medical professional, purchasing a medical product, taking a medical quiz, and evaluating at least one of a medical practitioner and a medical service facility, (Soll, ¶¶ 174-190) (predetermined tasks include evaluating the medical practitioner, scheduling an appointment, and taking a medical quiz using the revisit strategy file or the exit interview file).

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The obviousness and motivation to combine Joao and Soll are as provided in claim 13 above and incorporated herein by reference.

6. As per claim 17, the collective system of Joao and Soll disclose the method of claim 13. Joao further discloses a post-diagnosis method wherein at least one of the pre-medical event and post-medical event sets of files includes a calendar file that displays a schedule of time specific events associated with the treatment pathway, said calendar file adapted to be modified by the patient using the input device of the patient terminal device, (Joao, ¶ 148, 150, 152, 266-270) (an appointment schedule is considered to be analogous to a calendar file that displays a schedule of time specific events associated with the treatment pathway).

The obviousness and motivation to combine Joao and Soll are as provided in claim 13 above and incorporated herein by reference.

7. As per claim 18, the collective system of Joao and Soll disclose the method of claim 13. Joao further discloses a method further including the step of providing an electronically displayable duplicate account file containing input fields for receiving account information relating to an authorized user to create a duplicate account for permitting the authorized user to access and modify the patient's treatment pathway, (Joao, ¶ 24-28) (a user, payer and/or intermediary utilizing the system in the same or similar manner as a patient or provider is analogous to an authorized user with a duplicate account for access and modification).

The obviousness and motivation to combine Joao and Soll are as provided in claim 13 above and incorporated herein by reference.

8. Claims 14, 20-24, 40, 47, and 48 are rejected under 35 U.S.C. 103(a) as being

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unpatentable over the collective system of Joao and Soll as applied to claims 13, 19, and 39 above, and further in view of Schoenburg et al., (U.S. 6,463,417).

9. As per claim 14, the collective system of Joao and Soll disclose the method of claim 13. However Joao and Soll fail to clearly disclose a method further including the steps of providing the patient with a medical practitioner code designating the medical practitioner conducting the medical event and requiring the patient to input the medical practitioner code into an electronically displayable file containing a code input field and transmitting the code to the healthcare information provider system.

Schoenburg discloses a method including the steps of providing the patient with a medical practitioner code designating the medical practitioner conducting the medical event and requiring the patient to input the medical practitioner code into an electronically displayable file containing a code input field and transmitting the code to the healthcare information provider system, (Schoenburg, Abstract, Fig. 2, Col. 3, lines 20-52; Col. 4, line 52 through Col. 5, line 40).

It would be obvious to one of ordinary skill in the art to combine Schoenburg into the collective system of Joao and Soll. The motivation would be to provide a method of and system for distributing medical information in which the medical provider has quick access to a patient's medical record, but only to the information in the medical record that is necessary for the proper treatment of the patient at that time, (Schoenburg, Col. 2, lines 16-22).

As per claim 47, the collective system of Joao, Soll, and Schoenburg disclose the method of claim 14. Schoenburg further discloses a method including providing general content to a



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further user who does not utilize a code, (Schoenburg, Abstract, Fig. 2, Col. 3, lines 20-52; Col. 4, line 52 through Col. 5, line 40).

Although Schoenburg does not specifically describe providing general content to a further user who does not utilize a code, Schoenburg clearly discloses creating a hierarchical data access system wherein the amount and content of data available can be adjusted between different users depending upon the code provided.

In view of Schoenburg, it would be obvious to providing general content to a further user who does not utilize a code. The motivation would be to create a system of hierarchical data categorizing the individual's medical information into privacy levels ranging from least private to most private, (Schoenburg, Abstract).

As per claim 48, the collective system of Joao, Soll, and Schoenburg disclose the method of claim 47. Joao further discloses a method wherein the general content includes at least one of a physicians directory, a graphical diagnostic, and product links, (Joao, ¶ 150, 151, 153) (database containing a physician's directory and insurance products).

The obviousness and motivation to combine Joao, Soll, and Schoenburg are as provided in the rejection claims 13 and 14 above and incorporated herein by reference.

As per claims 1-12 and 19-46, these claims directed toward system and storage media contain the same or similar limitations as those rejected above in this action and in the non-final rejection dated 1/29/2008.

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***Response to Argument***

Applicant's arguments filed 8/15/08 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response 8/15/08.

(A) In response to Applicant argument, it is respectfully submitted that the Examiner has applied new passages and citations to amended claims 1-48 at the present time. The Examiner notes that amended limitations were not in the previously pending claims as such, Applicant's remarks with regard to the application of Joao, Soll and/or Schoenburg to the amended claims are addressed in the above Office Action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT W. MORGAN whose telephone number is (571)272-6773. The examiner can normally be reached on 9:00 a.m. - 5:30 p.m. Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, C. Luke Gilligan can be reached on (571) 272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert Morgan/  
Primary Examiner, Art Unit 3626